

# **TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH**

## **LSA Document #12-431**

### **SUMMARY/RESPONSE TO COMMENTS FROM THE PUBLIC HEARING**

The Indiana State Department of Health's (ISDH) Executive Board preliminarily adopted Rule 410 IAC 7-25, On Farm Poultry Processor Exemption, on September 12, 2012. ISDH published the proposed rule in the November 7, 2012, Indiana Register. A public hearing was held in Indianapolis on December 6, 2012, to solicit comments from the public on the proposed rule. The following parties made comments during the public hearing:

Carol Ryan, Marion County Health Department  
Jeff Sonnefield, Marion County Health Department

**Ms. Ryan had many questions of the ISDH staff about Indiana Code 16-42-5-29 and 9 CFR 381.10 that is incorporated by reference into 410 IAC 7-25. The ISDH staff replied to those comments during the public hearing and those questions are not summarized here as they were not comments about the rulemaking itself. The full transcript of the public hearing is attached to the hearing officer report for reference.**

The following is a summary of the comments received and ISDH's responses thereto:

Comment by Carol Ryan: Ms. Ryan is concerned that, under this rule, there will be no one checking the small farmers for compliance to ensure that the farmers are not slaughtering poultry that is dying, disabled or diseased; not distributing poultry that had died before slaughter; and that the farmers do process poultry safely while maintaining proper temperature control of the poultry.

Response: Since the product is exempt from the law regarding all other food safety requirements then no one will be doing routine monitoring or inspections of these operations for food safety. However, an inspection may be conducted to address issues if a complaint were received by the State Health Commissioner concerning unsanitary conditions. The new rule requires the product to be sold only in a frozen state to minimize the risks of disease transmission. Raw poultry is still expected to be fully cooked by the consumer prior to consumption just like if it was purchased at a grocery store. A state or local health department may from time to time check on the producer to ensure it is keeping to the 1,000 bird per year limit by examining records as specified in the rule and USDA law.

Comment by Carol Ryan: Ms. Ryan wanted to know why would ISDH ever consider raw poultry a non-potentially hazardous food and why would ISDH not inspect poultry that is being sold to the public.

Response: The ISDH does not consider raw poultry to be a non-potentially hazardous food, hence the requirement for the raw product to be maintained in a frozen state with all the required labeling. The USDA has had this same exemption in law for over 70 years and they do not consider it necessary to regulate at this point in time due to the overall low numbers of birds being processed. There is a great deal of work-to-hand processing of poultry and it is felt that the number of farms participating and the locations where it can be sold will be self limiting in general and in turn limit the exposure to public health.

Comment by Carol Ryan: Ms. Ryan wanted to know if the 1,000 bird exemption is already in effect at this time at the federal level and where the product could be sold.

Response: Yes, it is the same federal exemption as mentioned above. However, the ISDH Rule 410 IAC 7-24, Retail Food Establishment Sanitation Requirements, prohibited these products from being sold at retail, so this is why there is now more confusion. The ISDH had stopped this practice because of the USDA exemption, but now ISDH is required to accept the new exemption and adopt a rule to cover it according to Indiana Code 16-42-5-29(g). The USDA does not address or limit where the exempted product can be sold, yet this new rule does.

Comment by Jeff Sonnefield: Mr. Sonnefield has concerns about selling the poultry without some sort of inspection or ensuring that sanitary practices are being maintained. He is concerned that poultry is one of the worst food items you could potentially sell because it has salmonella. He is concerned that if poultry is not regulated or not handled properly, it can be a very dangerous item and could put the public at risk for food borne illness.

Response: The new rule requires the product to be sold only in a frozen state to minimize the risks of disease transmission. Raw poultry is still expected to be fully cooked by the consumer prior to consumption just like if it was purchased at a grocery store. A state or local health department may from time to time check on the producer to ensure it is keeping to the 1,000 bird per year limit by examining records as specified in the rule and USDA law. The USDA has had this same exemption in law for over 70 years and they do not consider it necessary to regulate at this point in time due to the overall low numbers of birds being processed. There is a great deal of work-to-hand processing of poultry and it is felt that the number of farms participating and the locations where it can be sold will be self limiting in general and in turn limit the exposure to public health.

Comment by Carol Ryan: Ms. Ryan does not approve of the current Federal Rule that is in place (9 CFR 381.10), but she approves of anything that can be done to tighten that rule, which the freezing and only allowing the poultry to be sold at farmer's markets does do.

Comment by Jeff Sonnefield: Mr. Sonnefield still disagrees with the policy of selling the chicken as a home based vendor at a farmer's market.

Response: 410 IAC 7-25-6 allows the poultry under this exemption to also be sold at a roadside stand or on the farm in addition to farmer's markets. ISDH understands your concerns, but is required to follow Indiana Code 16-42-5-29(g), which requires ISDH to adopt this rule to incorporate by reference 9 CFR 381.10(c) to allow poultry products slaughtered and processed on a farm for the purpose of conducting limited sales on the farm, at a farmer's market, or at a roadside stand and to require that poultry processed under this section be frozen at the point of sale and labeled in compliance with the requirements of 9 CFR 381.10.